

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

R.P.NO.06/97 in OA.NO.1264/95

Before this the 29th day of May 1997

CORAM: Hon'ble Shri M.R.Kolhatkar, Member (A)

Smt. Dijabai Birhade ... Applicant

By Advocate Shri K.B.Talreja

V/S.

Union of India & Ors. ... Respondents

By Advocate Shri V.S.Masurkar
C.G.S.C.

AND

Smt.Akkabai Ramdas Birhade ... 3rd Respondent
By Advocate Shri Suresh Kumar (Review Petitioner)

Tribunal's Order

In this Review Petition the private Respondent No. 3 has prayed for review of my judgement dated 19.12.1996. In Para 4 of the judgement it is stated that 'private respondent has not put in an appearance'. The Review Petitioner has stated that as a matter of fact, no notice was served on her in as much as although a notice was issued, the same had been returned back unserved because the address given in the application was incomplete. The address given was 'Smt.Akabai alias Indu, Hanuman Nagar, Kandivli, Bombay'. According to the applicant, there are two parts of Kandivli, Kandivli East and Kandivli West and Hanuman Nagar is a slum area with a population of one lac and 35 thousand and therefore with the said incomplete address, there was no possibility of service. The applicant has stated that her correct address is "Smt.Akkabai Ramdas Birhade, C/o.Mrs.Malan Dhansingh Yadav, Navyuvak Sanghatan Mandal, Hanuman Nagar, Near Yadav Kirana Shop, Kandivali (E), Mumbai- 400 101."

2. It appeared to me that prima facie Respondent No. 3 had not been served and therefore I fixed the case for preliminary hearing. Notice was issued to all the parties. Time was given to all the other parties to file a reply to Review Petition, but the same was not filed either by the original applicant or by the official respondents. Review Petitioner also did not choose to file a reply to the OA.

3. The contention of Review Petitioner/original Respondent No. 3 is that the correct position as to marital status is explained by late Government employee in his reply to the disciplinary authority dated 27.12. 1994 that 'there was no marriage between the late Government employee and the applicant. She was only living with the Government employee for a few years and thereafter left her husband on her own and this fact was informed to the 'Panchayat' of late Government employee's community', who have approved the same.' According to the Review Petitioner the applicant had not produced any evidence regarding her marriage. On the other hand, Review Petitioner has several pieces of evidence showing her subsisting marriage, namely, Voter's Identity Card, Electricity Bill etc. According to the Review Petitioner, she has three children from the deceased Government employee who are to be treated as an issue from the legally wedded wife of the Government employee and even assuming that the late Government employee had contracted first marriage with the applicant Dijabai, the three children do have a right to the estate of the deceased employee including the family pension. In this connection, she also refers to Bahri's 'Railway Pension and Retirement Benefits' Manual in which at page 49 the rule laid down is as below :-

"Where deceased employee is survived by a widow, but has left behind an eligible minor child from another deceased/divorced wife, the eligible minor child will be paid the share of F.P. which his/her mother would have received if she had been alive/not divorced."

4. In the present case, the facts are different. What is contemplated in the rules quoted above is that the wife is deceased or divorced. In the present case, the second wife is very much alive. Moreover, the department has taken a view that she is not a legally wedded wife. Moreover, there is also the rule that family pension is granted first to widow and then sons and daughters. Moreover, in the case of retiral benefits the greatest importance is required to be attached to the nomination left by the Government employee which is dealt ³ with in Rule 53 of the CCS (Pension) Rules which are para-materia ³ with rules for Railway servants.

5. I have already observed in my original judgement that pension is payable in terms of nomination to the legally wedded wife. In this matter, it is the intention that counts and ^{if} it was intended by the late Government employee that the children from the second wife, whatever the status of the wife may be in the eyes of the law, should be entitled to family pension, he should have taken action to amend his nomination. The deceased Government employee did no such thing. The contention of the late Government employee in his defence that no action can lie in the departmental enquiry regarding bigamy cannot be attached much weight because it remains a mere contention and the department had no time to scrutinise the same. Under the circumstances, I do not see that my order directing payment of family pension in favour of applicant requires any change.

6. At the argument stage, counsel for the official respondents stated that respondents have not been able to pay the family pension due to these disputes and therefore they should not be saddled with the burden of paying interest on family pension at the rate of 12%.

7. I am not impressed by this contention. The department is to act in accordance with the nomination and if it had so acted, no interest liability would have attached to the department. The department delayed the matter on the pretext of there being a dispute. The department also did not take action on the judgement dated 19.12.1996, although direction was given to comply with the judgement within three months. I am, therefore, of the view that no direction not to pay interest is required at the stage of review.

8. In my view, Review Petition has no merit and therefore the same is dismissed with no orders as to costs.

MR Kolhatkar
(M.R.KOLHATKAR)
MEMBER (A)

mrj.